

CALIFORNIA DEPARTMENT OF FISH AND GAME

4949 Viewridge Avenue
San Diego, CA 92123

February 26, 2008

Notification No.

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San Diego Creek Watershed - Level 2 Streambed Alteration Agreement Template

This template is for use as follows:

- Outside aquatic resource integrity areas as designated in the Special Area Management Plan (SAMP) for the San Diego Creek Watershed, Orange County California (U.S. Army Corps of Engineers, February, 2008).
- In major streams of the San Diego Creek Watershed (major streams include Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek).
- Permanent impacts must be less than or equal to 0.5 acre.
- Please be advised that no take for threatened or endangered species is authorized in this agreement. If any threatened or endangered species could be impacted by the work proposed, the operator shall obtain the required state and federal threatened and endangered species permit.

Eligible activities include: Utility Lines (construction and/or maintenance of new and existing facilities); Flood Control Facilities Maintenance (construction and/or maintenance of new and existing facilities); Road Crossings including Bridges and Culverts (construction and/or maintenance of new and existing crossings); Land Development for Residential, Commercial, Industrial, Institutional, and Recreational Facilities (construction and/or maintenance of new and existing land development and recreational facilities); Storm Water Treatment and Management Facilities (construction and/or maintenance of new and existing facilities); Habitat Restoration and Enhancement Projects (construction and/or maintenance of new and existing projects); and Fire Abatement and Vegetative Fuel Management Activities.

Note: Pre-developed templates will allow for greater predictability and faster processing. If project proponent desires a Level 2 Streambed Alteration Agreement (SAA), the arbitration process will be removed. If the project proponent disagrees, then a standard SAA or Master SAA (MSAA) will apply. Projects would have to demonstrate compliance with the California Environmental Quality Act (CEQA). The SAMP Program/WSAA Process EIS/EIR would suffice for CEQA clearance in some cases. Otherwise, local agencies or project proponents would prepare an additional CEQA document (tiered off of the SAMP Program WSAA Process EIS/EIR) to cover impacts not associated with a SAA.

AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION FOR WORK WITHIN MAJOR DRAINAGES OUTSIDE OF AQUATIC RESOURCE INTEGRITY AREAS

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and _____, hereinafter called the Operator, is as follows:

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WHEREAS, pursuant to Section 1602 of the Fish and Game Code, the Operator, on the _____, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of the following water(s): _____

WHEREAS, the Department (represented by _____) has determined that such operations may substantially adversely affect existing fish and wildlife resources specifically including: fishes: amphibians: reptiles: birds: mammals: native plants: and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5901, 5931, 5937, and 5948 may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of the Department's signature and the construction portion terminates on _____. This Agreement shall remain in effect to satisfy the terms/conditions of this Agreement. Any provisions of the Agreement may be amended at any time provided such Amendment is agreed to in writing by both parties. Mutually approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.

Pursuant to Section 1600 et. seq., the Operator may request one extension of the Agreement; the Operator shall request the extension of this Agreement prior to its termination. The one extension may be granted for up to five years from the date of termination of the Agreement and is subject to Departmental approval. The extension request and fees shall be submitted to the Department's South Coast Office at the above address. If the Operator fails to request the extension prior to the Agreement's termination, the Operator shall submit a new notification with fees and required information to the Department. Any construction/impacts conducted under an expired Agreement are a violation of Fish and Game Code Section 1600 et. seq. For complete information see Fish and Game Code Section 1600 et. seq.

The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by

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this Agreement, shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.

Project Description:

1. The Operator intends to alter the streambed by *Project Description*
2. The agreed work includes activities associated with No. 2 above. *Project location described in detail, list by SAMP document also section of drainage and major stream outside of aquatic resource integrity area.*

Impacts:

3. The Operator shall not temporarily impact more than _____ habitat within the stream, and shall not permanently impacts more than _____ habitat within the stream.

Mitigation:

Mitigation Standards: Mitigation ratios shall be determined by standards set forth in the SAMP for calculating mitigation ratios. Please see Master Streambed Conditions List for detailed formulas for calculating mitigation ratios (included in Appendix D of Draft SAMP EIS/EIR).

Mitigation Conditions:

4. Mitigation for areas of temporary disturbance – The Operator shall mitigate with the restoration of *<insert habitat type>* habitat within the stream. Mitigation shall include the revegetation of stripped or exposed work areas within the banks, bed, and channel of the stream (including construction areas, access roads, etc.) with native vegetation local to the area.
5. Mitigation for areas of permanent disturbance – The Operator shall mitigate with the enhancement/restoration of ___ acres on-site with an additional ___ acres off-site. The location and type of restoration shall be approved by the Department within 30 days of execution of this Agreement. Mitigation shall be completed by <date>. Prior to initiation of construction activities, a plant palette and planting plan prepared by a biologist familiar with restoration of native plants shall be submitted to the Department for approval by _____. This plan shall include plantings of both overstory and understory vegetation and shall be consistent with any recommendation by _____. This condition would be excluded from any project only having temporary impacts.

General Mitigation Success Criteria:

6. An annual report shall be submitted to the Department by January 1st of each year for 5 years after planting. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

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7. All planting shall attain 55% cover after 3 years and 75% cover after 5 years for the life of the project. Prior to the mitigation site(s) being determined successful, they shall be entirely without supplemental irrigation for a minimum of 2 years. No single species shall constitute more than 50% of the vegetative cover, no woody invasive species shall be present, and herbaceous invasive species shall not exceed 5% cover. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting.

- If after 3 years of monitoring the mitigation meets the 5-year success criteria, AND the Department reviews and approves the mitigation status in writing, the Operator(s) may consider the sites have been successful and cease monitoring.
- The Operator(s) shall not be released from these maintenance and monitoring obligations until such time as the Operator has requested and received written concurrence from the Department that the success criteria have been met.

8. All planting should be done after the first wetting rains between October 1st and February 1st to take advantage of the winter rainy season, dormancy of foliage, and rooting period to ensure optimum survival of plantings. Should the Operator be required to plant during other times of the year, chances of survival are diminished. To compensate for decreased survival rates, the Operator shall be required to augment the specified planting density by 25% to account for the likelihood of increased mortality of plantings.

9. The Department recommends that the landscaping within the open spaces and common areas of the development utilize native plant species. The use of invasive nonnative plants is strongly discouraged. Exotic plant species that should not to be used include those species listed on Lists A&B of the California Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999." This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained on the web site of the California Exotic Pest Council at <http://www.caleppc.org>. In addition, adjacent to the open space area, the landscaping should not use plants that require intensive irrigation, fertilizers, or pesticides. Water runoff from landscaped areas should be directed away from the open space and contained and/or treated within the development footprint.

10. The Operator shall provide irrigation when natural moisture conditions are inadequate to ensure survival of plants. Irrigation shall be provided for a period of at least two years from planting. Irrigation shall be phased out during the fall/winter of second year unless unusually severe conditions threaten survival of plantings. All plants must survive and grow for at least three years without supplemental water for the restoration phase of the project to be eligible for acceptance by the Department.

11. Plant material for revegetation should be derived from cuttings, materials salvaged from disturbed areas, and/or seeds obtained from randomly selected native trees and shrubs occurring locally within the same drainage.

12. Any replacement tree/shrub stock, which cannot be grown from cuttings or seeds, shall be obtained from a native plant nursery, be ant free and shall not be inoculated to prevent

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heart rot. The Operator shall provide a list of all materials which must be obtained from other than onsite sources.

Resource Protection:

13. The Operator shall annually inspect and submit photo-documentation of slope stability and fill covering the Uniaxial geogrid to monitor for exposure of the geogrid to the streambed. This long-term inspection is necessary to ensure that aquatic species (fish, reptiles, and amphibians) are not or do not have the potential to be trapped within the geogrid fabric. (If geogrid is used this would be an optional condition based on the project description).

14. The Operator certifies by signing this Agreement that the project site has been surveyed and shall not impact any rare, threatened, or endangered species; or the Operator certifies that such a survey is not required for the proposed project. If rare, threatened or endangered species occur within the proposed work area, or could be impacted by the work proposed, the Operator shall consult with the Department and obtain any required state and/or federal permits.

15. The Operator shall not remove or otherwise disturb vegetation or conduct any other project activities on the project site from March 15th to September 1st to avoid impacts to native breeding/nesting birds. If work during the breeding/nesting season can not be avoided, the Operator shall have a qualified biologist survey all breeding/nesting habitat within the project site and adjacent to the project site for breeding/nesting birds prior to construction or site preparation activities. Surveys shall begin no later than June 1st. Surveys shall be conducted a minimum of 3 times spaced 3 to 5 days apart and ending no more than 3 days prior to the onset of construction. Documentation of findings, including negative findings, must be submitted to the Department for review and concurrence. If no breeding/nesting birds are observed and concurrence has been received from the Department, site preparation and construction activities may begin. If breeding activities and/or an active bird nest is located and concurrence has been received from the Department, the breeding habitat/nest site shall be fenced a minimum of 300 feet (500 feet for raptors) in all directions, and this area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project.

16. No direct or indirect impacts shall occur to any threatened or endangered species. If any threatened or endangered species could be impacted by the work proposed, the Operator shall obtain the required state and federal threatened and endangered species permits. The Operator shall contact the Department's Environmental Scientist _____ at _____ to obtain information on applying for a "Take Permit" for state listed species.

17. If threatened or endangered avian species are observed in the area, no work shall occur during the breeding season (March 15th through September 15th) to avoid direct or indirect (e.g., noise) take of listed species except as authorized by state and/or federal threatened/endangered species permits/authorizations which may be required prior to commencing project activities. This Unauthorized take of such listed species may result in prosecution and cancellation of this Agreement. If no permit is required then the following conditions shall apply.

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18. Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918(50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

19. The Operator shall have a qualified wildlife biologist survey the area to confirm the presence/absence of *<list of sensitive species>* likely to be found in the area during the proposed operations. If evidence exist that additional surveys are required, survey techniques, timing, and schedule shall be approved by the Department. Survey results, analysis, and recommendations, along with the field notes shall be provided to the Department prior to commencing construction or within two weeks of completion of field surveys, whichever is earlier. Should any sensitive species be found during pre-project surveys AND work must be done in identified areas during sensitive periods, the Operator shall develop and implement a plan for the protection of these species. This plan shall be approved by the Department prior to commencing work. The results of any surveys and any protective measures instituted as a part of the protection and monitoring plan shall be provided to the Department within one week from implementation. The Operator shall be responsible for reporting all observations of threatened or endangered species or of species of special concern to the Department's California Natural Diversity Database within ten (10) days of sighting.

20. Should *<list of sensitive species>* or any other rare, threatened, endangered or sensitive species be sighted within the designated work area after construction commences the Operator shall contact the Department immediately of the sighting and shall request an onsite inspection by Department representatives (to be done at the discretion of the Department) to determine if work shall begin/proceed. If work is in progress when sightings are made, the Operator shall cease all work within 500 feet of the area in which the sighting(s) occurred and shall contact the Department immediately, to determine if work shall recommence.

21. Prior to any construction during the raptor nesting season, January 31st to September 1st, a qualified biologist shall conduct a site survey for active nests two weeks prior to any scheduled development. If an active nest is located, then no construction work shall be conducted within a 500 foot radius from the nest until the young have fledged and are independent of the adults.

22. The Operator's activities shall be limited to the period of _____ to _____.

23. The Operator's activities within the stream course shall be limited to the dry period of the year from May 1st to October 1st and/or when the stream is not actively flowing and no measurable rain is forecasted within 72 hours by the National Weather Service. If measurable rain is predicted within 72 hours during construction, all activities shall cease and protective measures to prevent siltation/erosion shall be implemented/maintained.

24. A qualified biological monitor with all required collection permits shall be on site during operations and shall survey for species prior to construction. If any life stages of any native vertebrate species are found in the path of construction, the monitor shall relocate the species to a safe location. Exclusionary devices shall be erected to prevent the migration into or the return of species into the work site.

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25. The Operator shall install and use fully covered trash receptacles with secure lids (wildlife proof) to contain all food, food scraps, food wrappers, beverage and other miscellaneous trash.

26. The Operator shall ensure that no guns/or other weapons are on-site during construction, with the exception of the security personnel and only for security type functions. No hunting shall be authorized/permitted during construction.

27. The Operator shall not permit pets on or adjacent to the construction site.

Fish Passage

28. When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code section 5937.

29. An adequate fish passage facility shall be incorporated into any barrier that obstructs fish passage.

30. Any structure/culvert placed within a stream where fish do/may occur shall be designed, constructed and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish that impedes their upstream or downstream movement. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any aspect of the proposed project results in a long term reduction in fish movement, the operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of fish across the structure.

31. No work shall be conducted within the flowing or ponded water within the river, which has potential to support steelhead. Adult steelhead are expected to be in the area during periods of high flow (January through March) and smolt are likely to be in the area during periods of receding flows (March to July). The Operator shall not work during these times. National Marine Fisheries Biologist shall be contacted to coordinate additional fish salvage and avoidance measures.

32. Permanent structures shall be designed, constructed, and maintained such that they do not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish that impedes their upstream or downstream movement. This includes, but is not limited to, the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any aspect of the proposed project results in a long term reduction in fish movement, the Operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of fish across the structure.

33. The owner of any dam shall allow sufficient water at all time to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the

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minimum flow of water in any river or stream, permission may be granted by the Department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the Department, it is impracticable or detrimental to the owner to pass the water through the fishway (Fish and Game Code 5937).

34. If flowing or ponded water is within the proposed work limits, the Operator shall telephone the fishery biologist, [<Department contact>](#), prior to commencing activities within the bed, bank, and channel. The Operator shall leave his/her name, date and time called, telephone number, the stream name, work location, nature of planned activities, and proposed schedule.

35. If flowing or ponded water is within the proposed work limits, the Operator shall have a qualified fisheries biologist survey the proposed work area to verify presence/absence of the any sensitive fish species and any other species of special concern which may occur within the area. Survey methods shall conform to the current U. S. National Marines Fisheries Service (NMFS) and the Department. If any threatened or endangered species are found, the Operator shall cease all work within a mile radius of the sighting and in all water (flowing or impounded) and shall contact the Department within 24 hours of the sighting and shall request an onsite inspection by the Department representative (to be done at the discretion of the Department) to determine if work shall proceed. The results of the surveys shall be provided to the Department, along with copies of all field notes, prior to the completion of work or as otherwise specified. The survey techniques shall be approved by the Department, in writing, and the researcher shall have the required state and federal permits.

36. The Operator shall report all fish mortality immediately to the Department's Fisheries Biologist, [<Department contact>](#). The Operator shall report all rainbow trout/southern steelhead trout to [<Department contact>](#).

Work Areas and Vegetation Removal:

37. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel or lake margin, within the high water mark of the stream or lake, shall be restored to their original condition under the direction of the Department.

38. Restoration shall include the revegetation of stripped or exposed work and/or mitigation areas with vegetation native to the area.

39. The work area shall be flagged to identify its limits within the stream. Vegetation shall not be removed or intentionally damaged beyond these limits.

40. In areas of temporary disturbance, where vegetation must be removed, native trees and shrubs, with a diameter at breast height (DBH) of 3 inches or less, shall be cut to ground level with hand operated power tools rather than by grading. Vegetation maybe pruned to keep it out of the way of the equipment. Pruned vegetation pieces shall be salvaged to utilize in the revegetation of the site.

41. Vegetation removed from the stream shall not be stockpiled in the stream bed or on its

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bank. The sites selected on which to push this material out of the stream should be selected in compliance with the other provisions of this Agreement.

42. No living native vegetation shall be removed from the channel, bed, or banks of the stream, except as otherwise provided for in this Agreement.

Exotic Species Removal and Control:

43. The Operator shall remove any nonnative vegetation (tree tobacco, castor bean, giant cane, cape ivy, periwinkle, etc.) from the work area and shall dispose of it in a manner and a location which prevents its reestablishment. Removal shall be done at least twice annually during the spring/summer season, as needed, through the term of restoration.

Giant cane (*Arundo*), if present, shall be cut to a height of 6 inches or less, and the stumps painted with an herbicide approved for aquatic use within 5 minutes of cutting. Herbicides shall be applied at least three times during the period from May 1st to October 1st to eradicate these plants. Where proposed methods for removing giant cane deviate from this procedure, the Operator shall present the alternate methods, in writing, to the Department for review and approval, prior to construction.

44. Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Operator shall employ only those herbicides, such as Rodeo/Aquamaster (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

45. The Operator shall apply any herbicides in accordance with state and federal law. No herbicides shall be used where threatened or endangered species occur. No herbicides shall be used when wind velocities are above 5 miles per hour.

46. No herbicides shall be used on native vegetation unless specifically authorized in writing by the Department.

47. A small amount of selective trimming of native species (e.g., willow, oak and sycamore) may occur to prevent overspray of herbicide from reaching these branches, but only as provided within the conditions of this Agreement. Native vegetation may only be trimmed; individual plants shall not be removed. Material in excess of three (3) inches DBH shall require specific notice to and consultation with the Department.

Equipment and Access:

48. Staging/storage areas for equipment and materials shall be located outside of the stream/lake.

49. The equipment and vehicles shall be clean and free of any weed seeds prior to delivery to the site.

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50. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed.

51. Access to the work site shall be via existing roads and access ramps. Any ramp shall be revegetated and barrier placed (boulders) upon completion of the project to ensure access is eliminated to the streambed.

52. Vehicles may be driven on the stream/lake bed to traverse the distance to the work site from the access point, and in the work area, and only as necessary to accomplish authorized work.

Fill and Spoil:

53. The Operator shall submit final plans to the Department prior to start of construction.

54. Fill length, width, and height dimensions shall not exceed those of the original design/installation or the original naturally occurring topography, contour, and elevation. Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Except as otherwise specified in this Agreement, fill construction materials other than on-site alluvium, shall consist of clean silt-free gravel or river rock.

55. All fill materials shall be obtained from approved sources, and must be weed free.

56. To facilitate recovery of vegetation and provide additional protection from erosion, on ungrouted soil filled rip-rap banks, the Operator shall place branches from willow trees into the open toe-trench and within the wick zone of the shaped sideslope, and shall be augered into groundwater prior to placing the filter rock and unconcreted armor rock. This shall be done when willows are in their dormant period (October to February).

57. To facilitate restoration, the Operator shall salvage native topsoil (the top 6-to 12-inch-deep soil layer containing organic material) from the worksite prior to construction. Following construction, salvaged topsoil shall be returned to the work area/placed in the restoration site.

58. The Department recommends the following methods for salvaging, stockpiling, and replacing topsoil:

- Salvaged topsoil material should be stockpiled in a location where it is unlikely to be disturbed during construction in piles which do not exceed 8 feet in height (3 feet if stored more than one year),
- The soil should be maintained in a weed-free condition during storage.
- Following completion of construction, the topsoil should be tested to determine if it is suitable for restoration, and amended if necessary to encourage growth.
- Graded slopes should be maintained in a weed free state prior to revegetation. Construction areas should be prepared in a manner so as to prevent soil compaction in the upper 1 to 2 feet.
- A minimum 4 inch deep layer of topsoil should be distributed in the area to be revegetated. and;

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- The area should be rolled with a sheepsfoot roller to bind the soil layers.

59. Spoil storage sites shall not be located within a stream/lake, where spoil can be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.

Structures:

60. Structures and associated materials not designed to withstand high water flows shall be moved to areas above high water before such flows occur.

61. Any materials placed in seasonally dry portions of a stream or lake that could be washed downstream or could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.

62. Areas of disturbed soils with slopes toward a stream or lake shall be stabilized to reduce erosion potential. Planting, seeding and mulching is conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become established, non-erodible materials, such as coconut fiber matting, shall be used for such stabilization. Any installation of non-erodible materials not described in the original project description shall be coordinated with the Department. Coordination may include the negotiation of additional Agreement provisions for this activity.

63. Rock rip-rap may be placed in areas where other methods of bank protection are not possible. Voids between the rock shall be filled with soil to allow vegetation to grow. Revegetation shall be required within the rip-rap (see the mitigation section).

64. This Agreement does not authorize the construction of any temporary or permanent dam, structure or flow restriction except as described in the Operator's notification.

Pollution, Sedimentation, and Litter:

65. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated project related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into, waters of the State. Any of these materials, placed within or where they may enter a stream or lake, by the Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

66. The Operator shall remove all broken pieces of asphalt and other debris that has fallen into the streambed.

67. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to insure compliance.

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68. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

69. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of dredging.

70. No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.

71. The clean-up of all spills shall begin immediately. The Department shall be notified immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.

72. Equipment shall not be operated in wetted areas (including but not limited to ponded, flowing, or wetland areas) without the prior written approval of the Department.

73. Precautions to minimize turbidity/siltation shall be taken into account during project planning and shall be installed prior to construction. This may require that the work site be isolated and that water be diverted around the work area by means of a barrier, temporary culvert, new channel, or other means approved by the Department. Precautions may also include placement of silt fencing, straw bales, sand bags, and/or the construction of silt catchment basins, so that silt or other deleterious materials are not allowed to pass to downstream reaches. The method used to prevent siltation shall be monitored and cleaned/repared weekly. The placement of any structure or materials in the stream for this purpose, not included in the original project description, or Department approved water pollution/water diversion plan shall be coordinated with the Department. Coordination shall include the negotiation of additional Agreement provisions.

74. Operator shall take all necessary steps to contain sediment and reduce stream turbidity when the work area(s) are rewatered. Operator shall install an appropriate sediment control device downstream of the work area to filter sediment. Acceptable materials include silt fence, straw bales, or other appropriate devices to prevent sediment runoff during rewatering activities. Silt control shall remain in place only until the water running through the work area is clear of sediment.

75. The Operator shall submit to the Department for review and approval, the proposed storm water pollution prevention plan for this project. The plan shall be consistent with the terms and conditions of this Agreement. Any changes in the original project description or Department approved water pollution/water diversion plan shall be coordinated with the Department. Coordination shall include the negotiation of additional Agreement provisions.

76. Temporary fills shall be constructed of non-erodible materials and shall be removed immediately upon work completion, and shall be approved by the Department prior to

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implementation.

77. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

78. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

79. If a stream's low-flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.

80. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.

81. The work area shall be secured from trespass when (as determined by the Department) fish or wildlife resources are vulnerable to damage from unsupervised public access.

Administrative:

82. All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination is agreed to in writing by both parties. Mutually approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.

83. All project resident engineers, project engineers, project inspectors, contractors, and subcontractors, participating in this project must read and understand all terms and conditions of this Agreement and shall abide by the terms and conditions stated herein.

84. If the Operator or any employees, agents, contractors and/or subcontractors violate any of the terms or conditions of this Agreement all work shall terminate immediately and shall not proceed until the Department has taken all of its legal actions.

85. The Operator shall provide a copy of this Agreement, and all required permits and supporting documents provided with the notification or required by this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of this Agreement and all required permits and supporting documents shall be readily available at work site at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand. All contractors shall read and become familiar with the contents of this Agreement.

86. A pre-construction meeting/briefing shall be held involving all the contractors and subcontractors concerning the conditions in this Agreement.

87. The Operator shall notify the Department in writing at least five (5) days prior to initiation

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of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4949 Viewridge Avenue, San Diego 92123, Attn: ES. FAX Number (858) 467-4299, Reference # 1600-2006-0288-R5.

88. The Operator herein grants to Department employees and/or their consultants (accompanied by a Department employee) the right to enter the project site at any time to ensure compliance with the terms and conditions of this Agreement and/or to determine the impacts of the project on wildlife and aquatic resources and/or their habitats.

89. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

90. The Department reserves the right to cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of the Agreement.

91. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to, the following:

- a. The Department determines that the information provided by the Operator in support of this Agreement/Notification is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of this Agreement;
- c. The condition of, or affecting fish and wildlife resources change; and
- d. The Department determines that project activities have resulted in a substantial adverse effect on the environment.

92. Before any suspension or cancellation of the Agreement, the Department will notify the operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of the notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification as resulting in a substantial adverse effect on the environment and which will continue to substantially adversely affect the environment during the response period. The Operator may continue the specified activities if the Department and the Operator agree on a method to adequately mitigate or eliminate the substantial adverse effect.

CONCURRENCE

(Operator's name)

Name (signature)

Date

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Name (printed)

Title

California Department of Fish and Game

Environmental Program Manager
South Coast Region

Date